

RECEIVED

SEP 29 1992

FCC MAIL ROOM

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

ORIGINAL

DOCKET FILE COPY ORIGINAL

In re Amendment of Section 73.202(b) )  
of the Commission's Rules, Table of Allotments, )  
FM Broadcast Stations )  
(MOUNT OLIVE AND STAUNTON, ILLINOIS) )

MM Docket No. 98-\*\*\*  
RM-\*\*\*\*

To: The Chief, Allocations Branch, Mass Media Bureau

**PETITION FOR MODIFICATION OF CONSTRUCTION PERMIT,  
OR IN THE ALTERNATIVE, PETITION FOR RULE MAKING**

Talley Broadcasting Corporation (TBC), by its communications counsel, hereby requests the Commission to modify the unbuilt construction permit for radio station WSTN-FM that TBC holds for Channel 287A at Mount Olive, Illinois, so as to specify a new community of license, Staunton, Illinois. As TBC will show herein, the Commission can modify the permit directly, without commencing a notice-and-comment rule making to amend § 73.202(b) of its rules, the FM Table of Allotments, and without initiating a show-cause proceeding.

Alternatively, TBC seeks the initiation of a rule making to achieve the same result.

1. TBC holds the recently issued, unbuilt construction permit (File No. BPH-921125MF) for WSTN-FM, which is authorized to serve the community of Mount Olive, Illinois on Channel 287A. TBC has discovered that the FCC can reallocate the channel to the nearby community of Staunton. As TBC will demonstrate, the channel's removal to Staunton will represent a preferential rearrangement of FM Broadcast spectrum.

No. of Copies rec'd  
List A B C D E

0+4

2. Mount Olive is a community with a population of 2126, according to the 1990 U.S. Census. See Exhibit A. According to the same source, Staunton, which is approximately 8 km to the Southwest of Mount Olive, is home to 4,806 people — more than twice the population of Mount Olive. See Exhibit B. However, Staunton lacks any local broadcast service.

3. By means of Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recons. granted in part, 5 FCC Rcd 7094 (1990), the FCC began to allow FM licensees and permittees to propose changing their facilities' principal communities to be served without putting their underlying authorizations at risk. A modified facility proposed under this doctrine would have to represent a preferential rearrangement of FM Broadcast spectrum and would have to be mutually exclusive with the presently authorized facility. Id. Furthermore, although the FCC does not ordinarily remove the only broadcast service to a particular community, id., the Agency does not treat modification of an unbuilt construction permit (such as the one TBC holds) as removal of an existing broadcast service. Bagdad and Chino Valley, Arizona, 61 Fed Reg. 60043 (1996), Sanibel and San Carlos, Florida, 10 FCC Rcd 7215 (1995); Pawley's Island and Atlantic Beach, South Carolina, 8 FCC 8657 (1993); Glencoe and Le Sueur, Minnesota, 7 FCC Rcd 7651 (1992).

4. The FCC weighs allotment proposals such as this using the following priorities:

- (1) first aural service;
- (2) second aural service;
- (3) first local service; and
- (4) other public-interest factors.

Priorities (2) and (3) have equal rank. Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982). Here, Channel 287A represents a first local service to either Staunton or to Mount Olive. Thus, both proposals have equal rank under priority three, and it appears that neither proposal enjoys a priority under Category 1 or Category 2. See Exhibit C, the Technical Statement of Ben Evans, TBC's technical consultant.

5. When faced with a conflict between proposed first local services, neither of which triggers a priority under Category 1 or Category 2, and where, as here, each community appears to enjoy a number of reception services, the Commission favors the more populous community. See, e.g., Three Oaks and Bridgeman, Michigan, 5 FCC Rcd 1004 (1990); Clarksville and Lanesville, Indiana, 4 FCC Rcd 4968 (1989). As Exhibits A and B demonstrate, Staunton has more than double the population of Mount Olive. Staunton is not part of any Urbanized Area defined by the U.S. Census Bureau. (Neither is Mount Olive.) Hence, Staunton is to be favored over Mount Olive on § 307(b) grounds. Id.

6. Staunton is a vibrant community fully deserving of its own broadcast station. Staunton is an incorporated city with an elected mayor and aldermanic form of government. Staunton has its own site on the World Wide Web, <http://www.stauntonil.com>, as well as its own police and fire-fighting forces, its own library, and its own Chamber of Commerce. Staunton School District No. 6 provides public elementary and high-school education. There are also two parochial schools in the town (St. Michael's Catholic and Zion Lutheran). Staunton is also home to several houses of worship (Bethal Southern Baptist, First Assembly of God, First General Baptist Church, First United Baptist Church, First United Methodist Church, Hope Tabernacle, and St. Paul United Church of Christ, in addition to the previously mentioned St. Michael's

Catholic Church and Zion Lutheran Church). Staunton also has three banks, a substantial number of local businesses,<sup>1</sup> its own Post Office, and its own Zip Code (62088).

7. Staunton's Community Memorial Hospital is a 57 bed, acute care, not-for-profit hospital. The Hospital has provided continuous health care to area residents since 1951. Community Memorial Hospital holds full accreditation by JCAHO (Joint Commission on Accreditation of Health Care Organizations) and is licensed by the Illinois Department of Public Health. The Hospital is equipped with a multi-bed special care unit for monitoring of very ill patients, an emergency room, surgical suites. The radiology department offers fully accredited mammography service and in-house CT scanning. Community Memorial Hospital has established special programs to address the health-care needs of the people of Staunton: Home Health Care, one-day surgery/observation, and specialty services that bring medical specialists from larger, urban areas into the community. General surgeons, family practitioners, as well as medical specialists staff the hospital. Community Memorial also employs over 100 health care providers including registered nurses, technicians, technologists, therapists, pharmacists, and support staff. The hospital also has a close working relationship with the Staunton Area Ambulance Service. Heritage Manor, a privately owned nursing facility, is directly across the street from the hospital.

8. TBC proposes that the Commission employ the transmitter site authorized by construction permit BPH-921125MF as the reference coordinates for Channel 287A at Staunton. The authorized transmitter site is a few kilometers from the center of Staunton but is close enough to the community such that a Channel 287A facility constructed at the CP site will fully

---

<sup>1</sup>See [http://www.stauntonil.com/business\\_directory.html](http://www.stauntonil.com/business_directory.html).

cover Staunton with a  $70\text{-dB}\mu_{(f50,50)}$  signal. See Exhibit C. The CP site is also fully spaced to other FM allotments and assignments. *Id.* Because TBC intends to construct its Channel 287A facility at the CP site, that site's use as a reference point in rule making is wholly appropriate. Furthermore, the use of the authorized site will mean no loss area relative to the Mount Olive construction permit.

9. Because all parties other than TBC must protect the collocated Mount Olive construction permit, Counterproposals are both theoretically and practically impossible. Competing expressions of interest are likewise barred. See § 1.420(i) of the Rules. Because no one can lodge a Counterproposal or competing expression of interest, and because public-record materials confirm that Staunton is clearly and unquestionably worthier of local service than Mount Olive, and to expedite the authorization of a first local service to the people of Staunton, TBC requests that the Commission dispense with a 30-day filing period for Comments and Counterproposals. Rather, the Agency can and should proceed directly to the issuance of an Order modifying TBC's construction permit to specify Staunton as the principal community to be served.

10. The Administrative Procedure Act, 5 U.S.C. § 553(A), expressly authorizes the FCC to dispense with notice-and-comment rule making for good cause: when full notice-and-comment rule makings "... are impracticable, unnecessary, or contrary to the public interest." Here, notice-and-comment is unnecessary and contrary to the public interest due to that procedure's inherent delays. Moreover, because Counterproposals are impossible, and new preclusion nonexistent, there is no practical benefit to embarking on full notice-and-comment rule making. Proceeding directly to an Order reallocating Channel 287A to Staunton, as TBC requests

herein, will prejudice no one. All the FCC need do is issue an Order modifying the FM Table and TBC's construction permit as TBC requests. The Order must incorporate a brief statement of reasons for the channel's reallocation, and why notice and comment are unnecessary. Id. Furthermore, because TBC itself requests the modification of its own construction permit, undertaking a show-cause procedure is also unnecessary. See, e.g., Marina et al., California, 6 FCC Rcd 1491 (M.M. Bur. 1991) at n.1.<sup>2</sup>

11. Should the Commission elect to proceed via full notice-and-comment rule making, because Channel 287A allocations to both Mount Olive and Staunton cannot coexist, the procedure authorized in § 1.420(i) applies here.

12. TBC intends to promptly construct and place into service its proposed Staunton facility, and then to seek a covering license for the Staunton station, if the Commission modifies TBC's authorization as TBC proposes in this Petition. Because this proposal entails no technical changes (site, ERP, or HAAT), no further modification of construction permit is necessary, regardless of whether the FCC proceeds via rule making or by direct Order. Rather, TBC can apply to implement its proposal simply by filing an FCC Form 302-FM application for a license to cover the outstanding construction permit, specifying Staunton as the community of license, rather than Mount Olive.

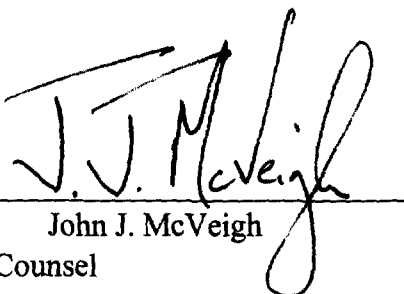
---

<sup>2</sup>TBC expressly waives its rights in that regard. See 47 C.F.R. § 1.87(h).

13. For the reasons stated above, the FCC should either promptly issue an Order modifying TBC's construction permit to specify Staunton as the principal community to be served, or should promptly initiate a rule-making proceeding to accomplish the same end.

Respectfully submitted,

**TALLEY BROADCASTING CORPORATION**

By   
John J. McVeigh  
Its Counsel

JOHN J. McVEIGH, ATTORNEY AT LAW  
12101 BLUE PAPER TRAIL  
COLUMBIA, MARYLAND 200036  
(301) 596-1655

Date: September 28, 1998

## **EXHIBIT A**



## U.S. Gazetteer

Select one of the following matches to your query to look at that place in the Tiger Map Browser or retrieve 1990 Census tables.

This is a searchable index. Enter search keywords:

- **Mount Olive Township, IL** (county subdivision)  
Population (1990): 3443  
Location: 39.06538 N, 89.75291 W  
Zip Code(s): 62033 62069  
Browse Tiger [Map](#) of area.  
Lookup 1990 Census [STF1A](#), [STF3A](#) tables.
- **Mount Olive, IL** (city)  
Population (1990): 2126  
Location: 39.07258 N, 89.72795 W  
Zip Code(s): 62069  
Browse Tiger [Map](#) of area.  
Lookup 1990 Census [STF1A](#), [STF3A](#) tables.

**\*Note:** This dataset is derived from the Census GICS and does not contain unincorporated place names.  
For other geographic entities, try searching the [USGS Geographic Names Information System](#) .  
The [US Gazetteer Place and Zipcode files](#) used in this service is available for downloading.

For additional information, comments and suggestions, see the [Feedback](#) page.

## **EXHIBIT B**

## U.S. Gazetteer

Select one of the following matches to your query to look at that place in the Tiger Map Browser or retrieve 1990 Census tables.

This is a searchable index. Enter search keywords:

- **Staunton, IL** (city)  
Population (1990): 4806  
Location: 39.01256 N, 89.78846 W  
Zip Code(s): 62088  
Browse Tiger [Map](#) of area.  
Lookup 1990 Census [STF1A](#), [STF3A](#) tables.
- **Staunton Township, IL** (county subdivision)  
Population (1990): 5482  
Location: 39.01894 N, 89.75202 W  
Zip Code(s): 62088  
Browse Tiger [Map](#) of area.  
Lookup 1990 Census [STF1A](#), [STF3A](#) tables.

*\*Note: This dataset is derived from the Census GICS and does not contain unincorporated place names.  
For other geographic entities, try searching the [USGS Geographic Names Information System](#) .  
The [US Gazetteer Place and Zipcode files](#) used in this service is available for downloading.*

For additional information, comments and suggestions, see the [Feedback](#) page.

**EXHIBIT C**



**ENGINEERING REPORT**

**A PETITION FOR RULE MAKING  
TO AMEND THE FM TABLE OF ALLOTMENTS**

**TO ASSIGN FM CHANNEL 287A  
TO STAUNTON, ILLINOIS**

**TALLEY BROADCASTING CORPORATION**

**SEPTEMBER 1998**

**Copyright © 1998 by Evans Associates**

**All Rights Reserved**



## ENGINEERING STATEMENT

This Engineering Statement and the attached figure have been prepared by B. Benjamin Evans, P.E. of Evans Associates, Consulting Communications Engineers in Thiensville, Wisconsin. This exhibit supports a petition by Talley Broadcasting Corporation, requesting modification of the Table of FM Allotments to specify FM Channel 287A at Staunton, Illinois.

\*\*\*\*\*

Evans Associates has been retained by Talley Broadcasting Corporation ("petitioner") to prepare the engineering portion of a petition for rule making to assign FM Channel 287A to Staunton, Illinois. This proposal is mutually exclusive with a construction permit, held by Talley Broadcasting, for a new FM station on Channel 287A at Mount Olive, Illinois. This proposal, in effect, would re-allot Channel 287A from Mount Olive to Staunton. The transmitter reference point proposed herein is the same as the authorized transmitter site for Channel 287A at Mount Olive.

The city of Staunton is located in Macoupin County in southwestern Illinois. The population of Staunton in 1990 was 4,806 persons. The instant FM channel, if assigned, would provide the city of Staunton with its first local broadcast service. Both Mount Olive and Staunton presently receive service from at least five fulltime operating aural broadcast stations.

As a result of a frequency search conducted by this engineer, it has been determined that Channel 287A may be assigned to Staunton, Illinois, without conflicting with any existing FM assignments or proposed assignments that are known by the petitioner, other than the allotment of Channel 287A at Mount Olive, Illinois. Therefore, it is proposed that Section 73.202(b) of the FCC Rules and Regulations be amended in the following manner:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Staunton, Illinois	--	287A

It is the petitioner's intention to build the Channel 287A facility as per its construction permit, and modify the license to specify Staunton as the community of license.



*Engineering Statement - Page 2*  
*Staunton, Illinois*

Excluding the existing allotment of Channel 287A at Mount Olive, the re-allotment of Channel 287A from Mount Olive, Illinois to Staunton, Illinois will meet all minimum distance separation requirements under the FCC Rules, as shown in attached Figure 1.

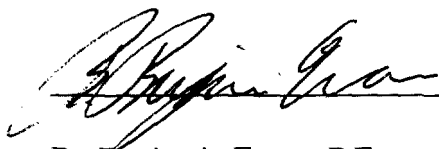
The transmitter site coordinates assumed for the purposes of this petition for rule making are:

N. 39°-02'-37"; W. 89°-44'-56"

From this location, it is 4.9 kilometers to Staunton on a bearing of 225° True. From this distance, compliance with the community of license coverage requirement (3.16 mV/m contour) would be assured, even at modest Class A transmitting facilities.

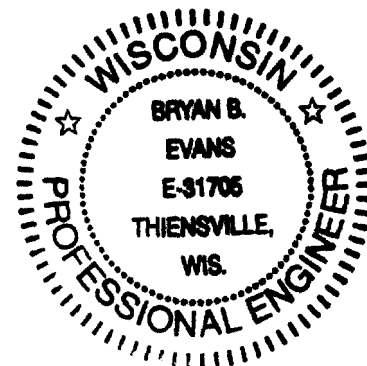
In view of the above, it is believed that the assignment of Channel 287A to Staunton, Illinois would be in the public interest.

The foregoing statement and the attached figure are true and accurate to the best of my knowledge and belief.



B. Benjamin Evans, P.E.

September 24, 1998



**ATTACHED FIGURE:**

Figure 1 - - - - Minimum Distance Spacings Study - Channel 287A, Staunton, IL

Evans Associates  
210 S. Main Street  
Thiensville, WI 53092  
FM FREQUENCY ALLOCATION STUDY

Channel: 287A ( 105.3 MHz) 6 KW ERP  
 Coordinates: 39 - 2 - 37 89 - 44 - 56 100 M HAAT  
 Job Title: TALLEY BCG - STAUNTON IL Φ indicates 73.215 Facility  
Cl.A Spacing: 73.207

CALL	Φ	CITY	CH/CL-ZN	ERP-kw	HAAT-m	DA	LATITUDE	BEAR-to	DIST-km	REQ
STATUS	STATE	FCC#	APPLICANT/LICENSEE			LONGITUDE	-from-°T	CLEAR-km	-km	
WEJT		Shelbyville	286B1	13.	140		39 35 39	51.5°	99.0	95.5
LIC	IL	BLH901018KB	>Cromwell Group, Inc.				88 50 44	232.1°	+3.5	
KZNN		Rolla	287C1	100.	192		37 52 39	233.9°	217.1	199.5
LIC	MO	BLH861103KB	>KTTR-KZNN, Inc.				91 44 45	52.7°	+17.6	
NEW		Mount Olive	287A	6.0	87		39 2 37	0.0°	0.0\	
CP	IL	BPH921125MF	>Talley Broadcasting				89 44 56	0.0°		
USED		Mount Olive	287A				39 4 20	30.6°	3.7\	
	IL	90-535	>				89 43 38	210.6°		
WJVO		South Jacksonvi	288A	6.0	100		39 43 20	333.2°	84.6	71.5
LIC	IL	BMLH910514KD	>Morgan Broadcasting				90 11 43	152.9°	+13.0	
KPNT		St. Genevieve	289C	100.	419		38 13 10	219.0°	117.5	94.5
LIC	MO	BLH871106KB	>River City License P				90 35 44	38.5°	+23.0	

>> \*\*\* CHANNEL SUITABLE FOR ASSIGNMENT \*\*\* <<